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Attorney for Securities and Insurance Departments

BEFORE THE STATE AUDITOR  
AND COMMISSIONER OF SECURITIES AND INSURANCE  
HELENA, MONTANA

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IN THE MATTER OF:	)	CASE NO. 04-03-06-212-I
	)	
AMERIPLAN USA CORPORATION,	)	NOTICE OF PROPOSED AGENCY
5700 DEMOCRACY DRIVE,	)	DISCIPLINARY ACTION
PLANO, TEXAS, 75024,	)	AND OPPORTUNITY FOR HEARING
A Discount Health Care Card provider;	)	
	)	
DENNIS BLOOM, individually and in his	)	
capacity as CEO for AMERIPLAN;	)	
DANIEL BLOOM, individually and in his,	)	
capacity as Director for AMERIPLAN; and	)	
	)	
SHIRL SHELLEY, individually and in her	)	
capacity as a broker and regional sales	)	
representative for AMERIPLAN, and	)	
JOHN AND JANE DOES 1-370;	)	
	)	
Respondents.	)	

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Staff of the Securities and Insurance Departments (Departments) of the office of the State Auditor as Commissioner of Securities and Insurance of the state of Montana (Commissioner), pursuant to the authority of the Securities Act of Montana, Section 30-10-101, et seq., Montana

Code Annotated (2005) (MCA), and the Insurance Code of Montana, Section 33-1-101, et seq., Montana Code Annotated (2005) (MCA), is proposing to the Commissioner that he take specific action against Ameriplan USA, Corporation, (Ameriplan) with a principle place of business located at 5700 Democracy Drive, Plano, Texas, 75024, Dennis Bloom, Daniel Bloom, Shirl Shelley, and John and Jane Does 1-370 as identified above for violations of the Montana Securities Act (Securities Act) and the Montana Insurance Code (Insurance Code). The Commissioner has authority to take such action under the provisions of Sections 30-10-102, 30-10-107, 30-10-201, 30-10-301, 30-10-304, 30-10-305, 30-10-309, 30-10-321, 30-10-324, 30-10-325, 33-1-102, 33-1-301, 33-1-311, 33-1-317, 33-1-318, 33-1-1302, and 33-38-101 through 33-38-108, MCA (2005).

In particular, the Departments' staff recommend specific action against Ameriplan and the individuals named as Respondents, including imposition of appropriate fines, appropriate restitution with interest and denial of any of Respondents' current or future applications for registration pursuant to the provisions of the Securities Act, as well as imposition of fines, appropriate restitution with interest and revocation, suspension, or denial of Respondents' registration or application for registration pursuant to the provisions of the Insurance Code.

Service of process is pursuant to §§30-10-107 (8) and 33-1-314, MCA.

### **REASONS FOR ACTION**

There is probable cause to believe that the following facts, if true, justify and support such specific action. Furthermore, there is reason to believe that the following facts will be proven true and, therefore, justify and support immediate issuance of an order requiring Respondents to cease and desist their activities in violation of the Montana Securities Act and the Montana Insurance Code.

### ALLEGATIONS OF FACT

1. Ameriplan is a medical discount card provider located at 5700 Democracy Drive, Plano, Texas, 75024. At all times material hereto, Ameriplan was not registered with the Securities Department of the Montana State Auditor's Office to transact business in securities, and was not registered with the Insurance Department of the Montana State Auditor's Office as a medical care discount card provider.

2. Dennis Bloom is the President and Chief Operating Officer of Ameriplan. Dennis Bloom is not registered with the Departments in any capacity.

3. Daniel Bloom is a Director of Ameriplan. Daniel Bloom is not registered with the Departments in any capacity.

4. Shirl Shelley is an Ameriplan broker and regional sales director, acting as a securities salesperson as defined by the Montana Securities Act (Act) at §30-10-103 (20), MCA, and as a participant in the Ameriplan illegal pyramid promotional scheme. Shirl Shelley is not registered with the Departments in any capacity.

5. John and/or Jane Does 1-370 (J. Doe) are salespersons as defined in the Act at §30-10-103 (20), MCA, and participants of Ameriplan's illegal pyramid promotional scheme. Ameriplan refers to these salespersons as "brokers". None of these J. Does is registered as salespersons pursuant to the Securities Act.

6. Advertising from Ameriplan indicated it had contracted with hundreds of Montana medical care providers, including doctors, physician assistants, nurse practitioners, and hospitals, that will grant discounts to holders of Ameriplan memberships. Few, if any, of the identified medical care providers have ever contracted with Ameriplan to offer any discounts for the costs of services.

7. Although Ameriplan indicates in its advertising that 30,000 dentists across the nation and 7500 chiropractors across the nation have contracted with Ameriplan to provide discounted services to Ameriplan members, few, if any, dentists and chiropractors in Montana have contracted with Ameriplan to provide services to Ameriplan members.

8. Additionally, materials obtained from Ameriplan indicate the program includes a sales plan and operation in which participants give consideration for the opportunity to receive compensation derived primarily from obtaining participation of other persons in the plan. Through the promotion of Ameriplan's "broker" plans, the company has recruited at least 370 brokers in Montana. Ameriplan's "brokers" are similar to "enrollers" as defined at § 33-38-102 (2), MCA.

9. A review of Ameriplan's marketing materials indicates that, in order to become a broker, an individual must pay an initial registration fee and purchase a training kit. There are two purchase options when becoming a broker: the "Basic Broker" package costs \$95 for the registration fee, the training kit, and the first monthly fee; the "Basic Broker including APP PAK" package costs \$295 and includes registration fee, training kit, first monthly fee, and an "APP PAK" which is described as a "special value sales aids package." Brokers then pay a monthly fee of \$35. This broker fee is consideration for the right to sell Ameriplan's medical discount cards, and includes a membership in the medical care discount card program, as well.

10. A review of the "Ameriplan Broker Policies and Procedures Manual" indicates that brokers are compensated as follows:

- 30% residual commission for enrolling new DVPC (dental, vision, pharmacy, chiropractic) card members.
- 30% residual commission for enrolling brokers

- 20% residual commission for enrolling new Ameriplan Health memberships.

11. Because broker packages are substantially more expensive than memberships in the various medical care discount card programs, the incentive to recruit brokers is significantly stronger.

12. Ameriplan's marketing materials indicate there are six levels of management in which additional commissions are earned based on an individual participant's recruitment of new brokers and members. The six managerial levels are as follows:

- Regional Sales Director (RSD)
- Senior Regional Sales Director (SRSD)
- Executive Sales Director (ESD)
- Senior Executive Sales Director (SESD)
- National Sales Director (NSD)
- National Vice President (NVP).

13. To achieve RSD status you must personally recruit six active members and four active brokers. Further, to maintain this status you must enroll a new member or broker every month.

14. To achieve a status higher than an RSD, you must meet the RSD criteria in addition to having recruited sales directors who work beneath you in the pyramid.

15. Ameriplan brokers earn substantially more in commissions through the recruitment of other brokers than through the sale of medical care discount cards. The income to the brokers is generated by obtaining consideration from persons recruited by the brokers who pay for the opportunity to receive compensation derived primarily from recruiting others to participate in the plan, rather than obtaining consideration for a product or service.

16. Ameriplan, its principals, employees and agents solicited investments in Ameriplan's program in Montana through the use of promotional materials, television commercials, newspaper advertisements, and internet websites. In doing so, Ameriplan, its principals, employees and agents, including Dennis and Daniel Bloom and Shirl Shelley, solicited at least 370 Montana residents to invest in a pyramid scheme by purchasing "broker" packages.

17. On April 3, 2006, an advertisement submitted by Shirl Shelley to the Helena Independent Record, instructed potential investors to visit her website. This website contains the following quotes "I made over \$10,000 in my first 90 days," "from zero to over \$100,000 per year in residual income in just 15 months," "seven years ago I was a broke used car salesman, today my wife and I are earning over a million bucks a year." Further, the website has illustrations indicating massive wealth, including a picture of a pot of gold. These large sums of money are made by recruiting other brokers to promote the Ameriplan pyramid scheme.

18. Ameriplan's website states that its medical care discounts are available in all states except Alaska. Respondents represented to persons in Montana that the Ameriplan program was properly registered in the State of Montana. However, Ameriplan's medical care discount card has not been approved by the Montana Insurance Department, as required by law.

19. The Departments' records indicate Ameriplan brokers are not registered as securities salespersons, despite selling an investment contract in the form of Ameriplan broker packages.

20. The Departments' records indicate Ameriplan broker packages are not registered as a security, despite the fact that these broker packages represent investment contracts, which are securities under Montana law.

21. On or about October 27, 2005, the Insurance Department issued a letter to Ameriplan's legal counsel and apparent agent, Cecil Mathis, indicating a thirty (30) day window for the company to operate as a medical care discount card organization while the Department reviewed its application. The letter clearly indicated if Ameriplan did not have a certificate of registration it was to cease promoting, offering and selling its discount cards in Montana once the thirty (30) days had expired. The letter clearly indicated the thirty (30) days expired on November 27, 2005. Since November 27, 2005, at least 31 Montanans became Ameriplan members. During this same time period, at least 65 Montanans became Ameriplan brokers.

22. Ameriplan continued to operate in Montana without any licensing or registration from either of the Departments after November 27, 2005.

23. On or about February 10, 2006, the Insurance Exams Division sent a letter to Ameriplan clearly indicating the company's application had not yet been and that the Insurance Department had received a consumer complaint about Ameriplan's program. Still Ameriplan continued to operate in Montana.

24. The Insurance Department again warned Ameriplan to stop its unlicensed activity on or about April 12, 2006, by a letter issued by the Deputy Insurance Commissioner.

25. Ameriplan continued to operate in Montana by promoting, offering and selling its various memberships and broker packages that include investment contracts to Montana residents until on or about April 28, 2006.

26. On or about December 28, 2005, the Securities Department requested specific information from Ameriplan regarding Montana residents who were participants in its program. The information provided by Ameriplan indicated that there were 82 active Ameriplan brokers as



of December 31, 2005. On January 25, 2006, the Department requested information regarding current Ameriplan members who were not brokers. Information received from Ameriplan indicated that there were 62 Ameriplan members who were not brokers as of February 1, 2006.

27. On or about April 20, 2006, the Securities Department requested additional specific information regarding Ameriplan's activities in Montana, including "a list of current and prior Ameriplan brokers." The Securities Department reiterated the request for information on or about April 28, 2006. On or about May 4, 2006, the Department received spreadsheets revealing the following information:

- \* At least 749 Ameriplan participants in Montana between April 30, 2001, and April 30, 2006;

- \* Of the 749 participants, at least 370 were Montana brokers between April 30, 2001 and April 30, 2006.

- \* Of the 749 participants, at least 379 were Ameriplan members who had not purchased either of the broker packages offered in the state of Montana between April 30, 2001 and April 30, 2006.

28. According to the documentation received from Ameriplan on or about May 4, 2006, there were additional Montanans that acted as Ameriplan brokers prior to April 30, 2001. However, Ameriplan failed to provide complete information on these brokers.

29. According to the Ameriplan documentation, Montana citizens have paid at least \$239,579.43 to Ameriplan over the past five years. This amount reflects both memberships and broker packages paid for by Montanans over the period.



4. Offer or offer to sell includes “each attempt or offer to dispose of or solicitation of an offer to buy a security or interest in a security for value.” §30-10-103(15), MCA.

5. Respondents are issuers or salespersons as defined by the Securities Act of Montana, §30-10-103(13) and (20), MCA.

6. Respondents’ broker package program is an investment contract, which is a security pursuant to § 30-10-103 (22) (a), MCA.

7. Respondents violated § 30-10-325, MCA, by conducting or promoting or causing to be conducted or promoted a pyramid promotional scheme in Montana, as defined at § 30-10-324 (6), MCA.

8. Respondents violated § 30-10-201 when, in connection with the above promotion of a pyramid scheme, they offered Ameriplan broker packages to persons in Montana without first being registered either as an issuer or as securities salespersons in Montana.

9. Respondents violated § 30-10-202, MCA, by offering the broker packages that constitute investment contracts, and therefore are securities, to persons in Montana without first registering these securities in Montana.

10. Respondents violated § 30-10-301 (1) (b), MCA, by failing to disclose the following material facts which were necessary to disclose in order to make the statements made about the investment in light of the circumstances under which they were made not misleading:

- a. that at all times material hereto, the Ameriplan broker program was not registered as a security in Montana;
- b. that at all times material hereto, the Ameriplan program is an illegal pyramid promotional scheme;

- c. that Ameriplan made fraudulent statements of material fact when it represented that the program was legitimate in order to encourage participation in the program; and
- d. that Ameriplan made misleading statements when marketing the availability of providers in the state of Montana.

11. Respondents violated § 30-10-301 (1) (c), MCA, by engaging in an act, practice and course of business that acts as a fraud and deceit on persons in Montana by promoting a program that constitutes an illegal pyramid promotional scheme.

12. Respondents violated § 30-10-301 (1) (c), MCA, by engaging in an act, practice and course of business that acts as a fraud and deceit on persons in Montana by making false representations regarding the Ameriplan program to at least 370 Montana citizens over the course of a five year period.

13. Respondents Ameriplan, and Dennis and Daniel Bloom violated §30-10-302, MCA, when they filed false or misleading documents with the commissioner in their attempt to notice-file as a multi-level marketing program.

14. Respondents Ameriplan, and Dennis and Daniel Bloom violated §30-10-302, MCA, when they filed false or misleading documents with the commissioner when they responded to the Securities Department's requests for information regarding the numbers of Montana citizens involved in the Ameriplan broker program.

15. Respondents violated §33-38-103 (1) (a) (iii), MCA, when they marketed, promoted and advertised a medical care discount card when such marketing, promotion and advertising was misleading, deceptive and fraudulent because it promised medical care providers in Montana had contracted with Ameriplan who had not so contracted.

16. Respondents violated §33-38-103 (2) (c), MCA, by advertising and otherwise promoting their medical care discount card in Montana as if there were contracts with certain medical providers when no such contracts existed.

17. Respondents violated §33-38-105 (1), MCA, when they continued to market, promote and sell their medical care discount cards in Montana without a certificate of registration from the State of Montana.

18. Respondent Ameriplan violated § 33-38-105 (8), MCA, when it failed to provide a complete list of authorized enrollers.

### **PUBLIC INTEREST**

For any and all of the reasons set forth above, it is in the public interest and will protect Montana investors and medical care discount card participants to:

1. Immediately issue a cease and desist order barring Ameriplan, Dennis and Daniel Bloom, and Shirl Shelley, as well as their agents and representatives from further violations of the Montana Securities Act and the Montana Insurance Code.

2. Order Ameriplan, Dennis and Daniel Bloom, Shirl Shelley, as well as their agents and representatives, to pay an administrative fine in an amount and upon such terms and conditions as supported by the evidence and determined at a hearing of this matter;

3. Order Ameriplan, Dennis and Daniel Bloom, Shirl Shelley, as well as their agents and representatives, to pay restitution, plus statutory interest of 10% from the date of wrongdoing, in an amount and upon such terms and conditions as supported by the evidence and determined at a hearing of this matter;

4. Deny Ameriplan's application for registration as a medical care discount card supplier in Montana because they are not of good character as evidenced by the fraudulent acts recited above; and

5. Take such other actions which may be in the public interest and necessary and appropriate for the protection of Montana investors and Montana medical discount card consumers.

### **RELIEF REQUESTED**

WHEREFORE, the Departments seek the following relief:

1. Pursuant to § 30-10-305, MCA, imposition of an administrative fine upon each Respondent not to exceed \$5,000 for each violation of §§30-10-301, 30-10-201, 30-10-302, and 30-10-202, MCA.

2. Pursuant to § 30-10-201 (18), MCA, imposition of a fine upon each Respondent not to exceed \$5,000 for violating §30-10-201 (1), MCA.

3. Pursuant to § 30-10-325 (3), MCA, imposition of a fine upon each Respondent not to exceed \$10,000 for each violation of §30-10-325 (1), MCA.

4. Pursuant to § 30-10-309, and § 33-1-1302, MCA, to pay restitution, plus statutory interest of 10% from the date of wrong-doing, in an amount and upon such terms and conditions as supported by the evidence and determined at a hearing of this matter.

5. Pursuant to § 33-1-317, MCA, imposition of a fine upon each Respondent not to exceed \$25,000 for each violation of the Montana Insurance Code.

6. Pursuant to § 33-38-105 (5), MCA, imposition of a fine upon each Respondent of not less than \$5,000 or more than \$25,000 per violation. Pursuant to §33-38-105 (5), MCA, each day the company operates without a certificate of registration is considered a separate violation.

7. Pursuant to § 33-38-105 (2), MCA, denial of Ameriplan's application for registration as a medical care discount card supplier because this supplier, and its officers and managers are not of good character when they committed fraudulent acts in the marketing, promotion and advertising of the Ameriplan card.

8. Pursuant to § 33-38-105 (2), MCA, denial of Ameriplan's application for registration as a medical care discount card supplier because this supplier, and its officers and managers are not of good character when they committed fraudulent acts associated with the conducting, promoting or causing the conducting of an illegal pyramid promotional scheme.

9. A finding that all sanctions and remedies detailed and described here are in the public interest and necessary for the protection of Montana investors.

10. Issuance of an immediate Order to cease and desist from committing further violations of the Act.

11. Any further action as deemed just and appropriate for the protection of Montana investors.

### **STATEMENT OF RIGHTS**

You are entitled to a hearing to respond to this notice, present evidence and arguments on all issues involved in this case. You have a right to be represented by an attorney at any and all stages of this proceeding. You may demand a formal hearing before a hearing examiner appointed by the Commissioner pursuant to the Montana Administrative Procedure Act, §§2-4-601, MCA, et seq., including §2-4-631, MCA. If you demand a hearing, you will be given notice of the time, place and the nature of the hearing.

If you want to contest the proposed action under the jurisdiction of the Commissioner, you must advise the Commissioner within fifteen (15) days of the date you receive this notice.

You must advise the Commissioner of your intent to contest the proposed action by writing to Roberta Cross Guns, Special Assistant Attorney General, State Auditor's Office, 840 Helena Avenue, Helena, Montana 59601. Your letter must clearly indicate whether you demand a hearing, or whether you waive formal proceedings and, if so, what informal proceedings you prefer for disposition of this case. Pursuant to §2-4-603(2), MCA, you may not request to proceed informally if the action could result in suspension, revocation or any other adverse action against a professional license. Should you request a hearing on the matters raised in this Notice, a hearing must be held within 45 days of the request, unless postponed by mutual consent of the parties, pursuant to §33-1-701 (2), MCA.

Should you request a hearing, you have the right to be accompanied, represented, and advised by counsel. If the counsel you choose has not been admitted to practice law in the state of Montana, he or she must comply with the requirements of Application of American Smelting and Refining Co., (1973), 164 Mont. 139, 520 P.2d 103.

#### **CONTACT WITH SECURITIES COMMISSIONER'S OFFICE**

If you have questions or wish to discuss this matter, please contact Roberta Cross Guns, legal counsel for the State Auditor, at 840 Helena Avenue, Helena, MT, 59601, (406)-444-2040 or, within Montana, (800)-332-6148. If an attorney represents you, please make any contacts with this office through your attorney.

#### **POSSIBILITY OF DEFAULT**

Failure to give notice or to advise of your demand for a hearing or informal procedure within fifteen (15) days will result in the entry of a default order imposing the disciplinary sanctions against you and your license, without further notice to you, pursuant to ARM §6.2.101, and the Attorney General's Model Rule 10, ARM §1.3.214.

DATED this 17<sup>th</sup> day of July 2006.

JOHN MORRISON  
State Auditor and ex-officio  
Commissioner of Securities and Insurance

By: Roberta Cross Guns  
Roberta Cross Guns  
Special Assistant Attorney General



CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy of the Notice of Proposed Agency Disciplinary Action and Opportunity for Hearing with Order for Temporary Cease and Desist attached to the following persons by depositing the same in the U.S. Mail, certified, return receipt requested, on this 18<sup>th</sup> day of July, 2006.

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